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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 WILLIAM A. WATSON,

10 Petitioner,

11 v.

12 DAN WHITE,

13 Respondent.

CASE NO. 3:15-CV-05076-RBL-DWC

REPORT AND
RECOMMENDATION

Noting Date: July 10, 2015

The District Court has referred this action to United States Magistrate Judge David W. Christel. Petitioner filed his federal habeas Petition (“Petition”), pursuant to 28 U.S.C. § 2254, seeking relief from a state court conviction. The Court concludes the Petition is time-barred and recommends the Petition be dismissed with prejudice.

BACKGROUND

In December of 2010, Petitioner pleaded guilty to two counts of indecent liberties without forcible compulsion. Dkt. 14, Exhibit 1. Petitioner was sentenced to a total of 174 months of confinement and consecutive terms of community custody for any period after he is released from confinement prior to the expiration of the maximum sentence. *See id.* Petitioner did not

1 challenge his conviction and sentence on direct appeal. *See* Dkt. 6. Petitioner also did not file a
 2 state collateral attack. *See id.*

3 On February 4, 2015, Petitioner signed, effectively filing¹, his federal habeas Petition.
 4 Dkt. 6, p. 15. Respondent maintains the Petition was signed after the statute of limitations
 5 expired, and therefore the Petition is untimely and should be dismissed with prejudice. Dkt. 13.
 6 Petitioner did not file a Response to Respondent's Answer.²

7 DISCUSSION

8 Pursuant to the Antiterrorism and Effective Death Penalty Act (“AEDPA”), which became
 9 effective on April 24, 1996, and is codified at 28 U.S.C. § 2241 *et seq.*, a one-year statute of
 10 limitations applies to federal habeas petitions. Section 2244(d)(1)(A) requires a prisoner to file a
 11 habeas petition within one year of “the date on which the [state court] judgment [of conviction]
 12 became final by the conclusion of direct review or the expiration of the time for seeking such
 13 review”. If a petitioner fails to seek direct review, the conviction becomes final when the time for
 14 seeking such review elapses. *See Wixom v. Washington*, 264 F.3d 894, 897-98 (9th Cir. 2001). In
 15 Washington, a notice of appeal must be filed within thirty days after the entry of the decision of
 16 the trial court. Wash. RAP 5.2(a). Thus, if a petitioner does not file a notice of appeal, the
 17 judgment becomes final at the end of the thirty day period, as it marks the expiration of the time
 18 for seeking direct review pursuant to § 2244(d)(1)(A). The Act further states “[t]he time during
 19 which a properly filed application for state post-conviction or other collateral review . . . is

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21 ¹ Under the prison “mailbox rule,” a petition is deemed filed for purposes of AEPDA’s statute of
 22 limitations the moment it is delivered to prison authorities for forwarding to the clerk of the district court.
See Patterson v. Stewart, 251 F.3d 1243, 1245 n. 2 (9th Cir. 2001).

23 ² Petitioner has not requested an evidentiary hearing, and the Court concludes an evidentiary
 24 hearing is not necessary in this case. *See* 28 U.S.C. §2254(e)(2) (1996).

1 pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. §
 2 2244(d)(2).

3 Petitioner did not file a direct appeal challenging his conviction, making his state
 4 conviction final on January 20, 2011, the date the time for filing a notice of appeal expired. The
 5 AEDPA limitations period began running the next day, January 21, 2011. Petitioner did not file a
 6 state collateral attack. Therefore, the statute of limitations expired on January 21, 2012, one year
 7 after Petitioner’s state conviction became final. Petitioner did not file his Petition until February
 8 4, 2015, more than three years after the statute of limitations expired.

9 The AEDPA statute of limitations is subject to equitable tolling where the petitioner
 10 pursued his rights diligently and “some extraordinary circumstance stood in his way.” *Holland v.*
11 Florida, 560 U.S. 631, 649 (2010) (internal quotations omitted). To receive equitable tolling, a
 12 petitioner at the very least must show the extraordinary circumstances “were the but-for and
 13 proximate cause of his untimeliness.” *Ansaldo v. Knowles*, 143 Fed. Appx. 839, 840 (9th Cir.
 14 2005). Petitioner fails to demonstrate any extraordinary circumstance prevented him from filing
 15 a timely habeas petition. Further, Petitioner fails to explain why he waited approximately four
 16 years after his state conviction became final before pursuing post-conviction relief. Accordingly,
 17 Petitioner fails to show he is entitled to equitable tolling and the Petition is barred by the statute
 18 of limitations.³

19 CERTIFICATE OF APPEALABILITY

20 A petitioner seeking post-conviction relief under 28 U.S.C. § 2254 may appeal a district
 21 court’s dismissal of the federal habeas petition only after obtaining a certificate of appealability
 22 (COA) from a district or circuit judge. *See* 28 U.S.C. § 2253(c). “A certificate of appealability

23 ³ Respondent also asserts the Petition should be denied because Petitioner failed to exhaust the
 24 available state remedies and is now procedurally barred in federal court. Dkt. 13. As the Court finds the
 Petition is time-barred, the Court declines to discuss Respondent’s additional arguments.

1 may issue . . . only if the [petitioner] has made a substantial showing of the denial of a
2 constitutional right.” 28 U.S.C. § 2253(c)(2). Petitioner satisfies this standard “by demonstrating
3 that jurists of reason could disagree with the district court’s resolution of his constitutional
4 claims or that jurists could conclude the issues presented are adequate to deserve encouragement
5 to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (*citing Slack v. McDaniel*,
6 529 U.S. 473, 484 (2000)). Pursuant to this standard, this Court concludes Petitioner is not
7 entitled to a certificate of appealability with respect to this Petition.

CONCLUSION

9 Petitioner's Petition is untimely as it was filed more than one year after the state court
10 judgment became final. There are no extraordinary circumstances in this case requiring the
11 application of equitable tolling principles. Therefore, the Petition is barred by the one-year
12 statute of limitations period imposed under 28 U.S.C. § 2244(d) and should be dismissed with
13 prejudice. No evidentiary hearing is necessary and a certificate of appealability should be denied.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on July 10, 2015, as noted in the caption.

20 Dated this 19th day of June, 2015.

Nicole Christel

David W. Christel
United States Magistrate Judge